United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 12-1462**
	)	**Issued: December 17, 2012**
DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS AGENCY, Tracy, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 27, 2012 appellant filed a timely appeal of an April 18, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a traumatic injury in the performance of duty on December 20, 2011.

FACTUAL HISTORY

On December 23, 2011 appellant, then a 49-year-old distribution process worker, filed a traumatic injury claim alleging that he was bending over and unpacking a box on December 20,

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant also filed a request for reconsideration, but was advised by OWCP that he could not pursue more than one avenue of appeal simultaneously.

2011 when he sustained lower back pain. He stopped work on December 21, 2011.[3] A December 21, 2011 work status note from Dr. Corky J. Hull, a Board-certified occupational physician, diagnosed lower back syndrome.

Dr. Saurabh K. Sharma, an osteopath and Board-certified family practitioner, related in a December 22, 2011 report that appellant twisted his back on December 20, 2011 while lifting a 40-pound box. On examination, he observed bilateral paralumbar muscle tenderness and spasms. Dr. Sharma diagnosed lower back pain consistent with the history of injury. In a December 30, 2011 report, he evaluated appellant and noted improvement. Dr. Sharma placed appellant on limited duty effective January 3, 2012.

In a January 5, 2012 report, Dr. Sharma remarked that appellant experienced a flare-up on the job. On examination, he observed bilateral paralumbar muscle tenderness and spasms. In January 12 and 19, 2012 reports, Dr. Sharma removed appellant from full-time work and placed him on modified assignment effective January 23, 2012.[4] Subsequent medical records for the period January 26 to February 9, 2012 advised that appellant returned to sedentary work and attended physical therapy.[5]

Dr. Sharma reiterated in a March 5, 2012 attending physician's report that appellant was lifting material on December 20, 2011 when he sustained a back injury. He checked the "yes" box in response to a form question asking whether this condition was causally related to federal employment activity. Dr. Sharma opined that appellant was partially disabled from December 20, 2011 to March 8, 2012 and restricted to light duty effective March 12, 2012.[6]

OWCP informed appellant in a March 19, 2012 letter that additional evidence was needed to establish his claim. It gave him 30 days to submit a factual statement detailing the work event that occurred on December 20, 2011 and a report from a qualified physician explaining how this purported incident caused or contributed to a diagnosed injury.[7]

Appellant specified in an April 6, 2012 statement that he reinjured his back on March 24, 2012 while unpacking items and was thereafter subject to a permanent 20-pound lifting restriction.

By decision dated April 18, 2012, OWCP denied appellant's claim, finding the evidence insufficient to establish that an employment incident occurred on December 20, 2011 as alleged. It also found that the medical evidence was insufficient to diagnose that the condition was causally related to a work event.

[3] Appellant subsequently filed a claim for compensation on March 19, 2012.

[4] The employing establishment offered light-duty work in a January 24, 2012 letter. Appellant accepted the offer on January 25, 2012.

[5] The case record contains physical therapy records for the period February 7 to 23, 2012.

[6] Dr. Sharma's report essentially incorporated the content of numerous work status notes for the period December 22, 2011 to March 22, 2012.

[7] OWCP pointed out that the claim was originally received as a simple, uncontroverted case resulting in minimal or no lost time from work and payment was approved for limited medical expenses without formal adjudication.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,[8] including that he is an "employee" within the meaning of FECA and that he filed his claim within the applicable time limitation.[9] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[10]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[11]

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[12] Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.[13]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[14]

ANALYSIS

The Board finds that appellant established that he was bending over and unpacking a box on December 20, 2011. As noted, an employee's statement alleging that an incident occurred at

[8] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[9] *R.C.*, 59 ECAB 427 (2008).

[10] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[11] *T.H.*, 59 ECAB 388 (2008).

[12] *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

[13] *Betty J. Smith*, 54 ECAB 174 (2002).

[14] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[15] The case record establishes that appellant stopped work and promptly received medical treatment from Dr. Hull on December 21, 2011. He filed a traumatic injury claim on December 23, 2011, and was placed on limited duty on account of a back injury. In view of the totality of the evidence, the Board finds that an employment incident occurred on December 20, 2011 as alleged.

The Board also finds that the medical evidence does not establish that the accepted employment incident caused or contributed to a lower back condition. In a December 22, 2011 report, Dr. Sharma related that appellant sustained lower back pain on December 20, 2011 while lifting a 40-pound box.[16] He reiterated his opinion in a March 5, 2012 attending physician's report and checked the "yes" box indicating that appellant's condition was causally related to federal employment activity.[17] However, Dr. Sharma failed to explain how bending over and unpacking a box resulted in a back condition on December 20, 2011.[18] Medical reports consisting solely of conclusory statements without supporting rationale are of diminished probative value.[19]

Dr. Hull's December 21, 2011 work status note diagnosed lower back syndrome and Dr. Sharma's remaining medical records from December 22, 2011 to March 22, 2012 were of diminished probative value on the issue of causal relationship because none of these documents addressed the issue.[20] A medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician.[21] The records from a physical therapist for the period February 7 to 23, 2012 do not constitute competent medical evidence.[22] In the absence of rationalized medical opinion evidence, appellant failed to meet his burden of proof.

Appellant contends on appeal that his supervisor did not controvert the December 20, 2011 employment incident, the medical evidence diagnosed lower back spasms and OWCP paid for his medical expenses. The Board, as noted, finds that the work event occurred on December 20, 2011, but also finds that the medical evidence is insufficient to establish the claim. The Board has held that payment for medical expenses does not, in and of itself, constitute

[15] *S.P.*, 59 ECAB 184 (2007).

[16] *See John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician's opinion must discuss whether the employment incident described by the claimant caused or contributed to diagnosed medical condition). *See also M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980) (medical opinions based on an incomplete or inaccurate history are of diminished probative value).

[17] *See P.C.*, Docket No 11-509 (issued September 29, 2011) (a checkmark response, without further explanation or fortifying rationale, is of diminished probative value on the issue of causal relationship).

[18] *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

[19] *William C. Thomas*, 45 ECAB 591 (1994).

[20] *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[21] *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949).

[22] 5 U.S.C. § 8101(2); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (a physical therapist is not a physician as defined under FECA).

acceptance of a particular condition or disability in the absence of evidence indicating that a particular condition or disability has been accepted as work related.[23]

Appellant submits new evidence on appeal following issuance of the April 18, 2012 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.[24]

Appellant may submit this or any new evidence or argument as part of a formal written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not establish that he sustained a traumatic injury in the performance of duty on December 20, 2011.

ORDER

IT IS HEREBY ORDERED THAT the April 18, 2012 decision of the Office of Workers' Compensation Programs be affirmed as modified.

Issued: December 17, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[23] *Gary L. Whitmore*, 43 ECAB 441 (1992).

[24] 20 C.F.R. § 501.2(c).